

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

January 17, 2024
09:30 AM

=====X
IN RE:

Case No. 123-43197-NHL

JOYCE A HENRY,

Hon. NANCY HERSHEY LORD
NOTICE OF MOTION

Debtor.

=====X

PLEASE TAKE NOTICE, that upon the within application, Krista Preuss, Chapter 13 Trustee will move this court before the Hon. Nancy Hershey Lord, U.S. Bankruptcy Judge, at the United States Bankruptcy Court, on January 17, 2024 at 09:30 AM or as soon thereafter as counsel can be heard, for an order pursuant to 11 U.S.C. 1307(c) dismissing this Chapter 13 case and for such other and further relief as may seem just and proper.

PLEASE TAKE FURTHER NOTICE, that any hearing on the within application will be held by telephone or video conference only. No in-person hearing will be held in the Courthouse.

All parties should register their appearance with **eCourt Appearances** at least 24 hours before the hearing. Attorneys with a CM/ECF account may find the program under the "Utilities" menu after logging on to CM/ECF. Those without CM/ECF accounts may access the program on the website at <https://ecf.nyeb.uscourts.gov/cgi-bin/nyebAppearances.pl>. Telephonic dial-in instructions are below. Videoconferencing information, if applicable, will be sent to registered participants by email; please note the email will not be sent until 48 hours before the hearing.

Dial-in Instructions:

1. Dial in Number 888-363-4734
1. Access Code – 4702754
2. Announce who you are each time before speaking
3. Avoid the use of a speaker phone (use a landline if possible)
4. All persons not speaking should mute their phones
5. Speak up and enunciate so that you can be heard and understood

PLEASE TAKE FURTHER NOTICE, that the hearing on the within application may be continued or adjourned from time to time without further notice other than an announcement of the adjourned date at the hearing.

Responsive papers shall be filed with the bankruptcy court and served upon the Chapter 13 Trustee, Krista Preuss, Esq., no later than seven (7) days prior to the hearing date set forth above. Any responsive papers shall be in conformity with the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rules for the Eastern District of New York and indicate the entity submitting the response, the nature of the response and the basis of the response.

Date: Jericho, New York
December 27, 2023

/s/ Krista Preuss
KRISTA PREUSS, TRUSTEE
100 JERICHO QUADRANGLE, STE 127
JERICHO, NY 11753
(516) 622-1340

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

January 17, 2024
09:30 AM

=====X

IN RE:

Case No: 123-43197-NHL

JOYCE A HENRY,

Hon. NANCY HERSHEY LORD

APPLICATION

Debtor.

=====X

TO THE HONORABLE NANCY HERSHEY LORD U.S. BANKRUPTCY JUDGE:

Nathan Z. Kaufman, Staff Attorney to KRISTA PREUSS, Chapter 13 Trustee in the above-captioned estate, respectfully represents the following:

1. The Debtor filed a petition under the provisions of 11 U.S.C. Chapter 13 on September 7, 2023, and, thereafter, KRISTA PREUSS was duly appointed and qualified as Trustee.

2. A review of the Court's docket indicates that the Court did not enter an Order extending the time for the Debtor to obtain and file the Certificate of Credit Counseling. Moreover, as of the date of this application the Debtor has failed to file a Certificate of Credit Counseling from an approved nonprofit budget credit counseling agency as required by 11 U.S.C. § 521(b)(1).

3. The Debtor's proposed Chapter 13 Plan (hereinafter the "Plan"), dated September 21, 2023 and reflected in the Court's docket as number 10, provides for a monthly Plan payment of \$500 per month for a period of 60 months. The Plan proposes a pro rata distribution to all timely filed general unsecured proofs of claim.

4. The Trustee objects to the confirmation of the Plan because the Plan is not adequately funded to provide for full repayment to all secured creditors as required by 11 U.S.C § 1325(a)(5), and the Debtor's supporting budget, schedules I & J, does not show an ability to increase plan payments to an amount which is sufficient to pay all secured creditors in full.

5. The Trustee objects to the confirmation of the Plan because the Plan does not specifically provide for treatment of all secured creditors as required by 11 U.S.C § 1325(a)(5).

6. The Trustee objects to the confirmation of the Plan because the Debtor's Plan payment of \$500 is less than the Debtor's net monthly income of \$1,656, and the Plan provides for less than 100% distribution to unsecured creditors.

7. Furthermore, the Debtor has failed to:

- a. commence making Chapter 13 Plan payments to the Trustee as required by 11 U.S.C. § 1326(a)(1); and
- b. comply with 11 U.S.C § 1325(a)(6) in that the Debtor has failed to submit timely Chapter 13 Plan payments to the Trustee, and is \$1,500.00 in arrears through and including December 2023; and

- c. provide the Trustee with a copy of a federal income tax return or transcript for the most recent year, 7 days before first meeting of creditors pursuant to 11 U.S.C. §521(e)(2)(A)(i); and
- d. provide the Trustee with disclosure documentation as required by E.D.N.Y LBR 2003-1; and
- e. serve the plan on the trustee and all creditors within 7 days of filing of the plan and file proof of service thereof as required by E.D.N.Y. LBR 3015-1(b).

8. A delay has occurred that is prejudicial to the rights of creditors. The case must be dismissed under 11 U.S.C. § 1307(c)(1) and (c)(5).

9. Each of the foregoing constitutes cause to dismiss this Chapter 13 case within the meaning of 11 U.S.C. §1307(c).

WHEREFORE, the Chapter 13 Trustee respectfully requests that this Court enter an Order dismissing this Chapter 13 case, and such other and further relief as may seem just and proper.

Dated: Jericho, New York
December 27, 2023

s/Nathan Z. Kaufman
Nathan Z. Kaufman, Staff Attorney
Chapter 13 Trustee Krista Preuss

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
IN RE:

JOYCE A HENRY,

Debtors.
-----X

Case No: 123-43197-NHL

CERTIFICATE OF SERVICE

I, Nathan Z. Kaufman, declare under penalty of perjury that I have sent the attached document to the below listed entities in the manner shown, and prepared the Certificate of Service and that it is true and correct to the best of my information and belief.

Notice by first class mail was sent to the following persons/entities:

JOYCE A HENRY
3609 FARRAGUT ROAD
BROOKLYN, NY 11210

Notice by electronic transmission generated by the ECF system to the following person/entities pursuant to Bankruptcy Rule 9036:

KARAMVIR DAHIYA, ESQ., karam@bankruptcypundit.com
U.S. Bank Trust N.A. c/o McCalla Raymer Leibert Pierce, LLC, linda.st.pierre@mccalla.com
Fay Servicing, LLC c/o Gross Polowy LLC, ecfnotices@grosspolowy.com

Transmission times for electronic delivery are Eastern Time zone.

This December 27, 2023

/s/Nathan Z. Kaufman
Nathan Z. Kaufman, Staff Attorney
Office of the Standing Chapter 13 Trustee
Krista Preuss
100 Jericho Quadrangle; Ste 127
Jericho, NY 11753
(516) 622-1340

CASE NO: 123-43197-NHL
Hon. NANCY HERSHEY LORD

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

=====

IN RE:

JOYCE A HENRY,

Debtor.

=====

NOTICE OF MOTION AND APPLICATION TO DISMISS CASE

=====

KRISTA PREUSS, TRUSTEE
100 JERICO QUADRANGLE, STE 127
JERICO, NY 11753
(516) 622-1340